



The Struggle for Same-Sex Marriage in India

Akshat Pandey, Dr. Ratnesh Srivastava

Law College Dehradun, Uttarakhand University

Introduction: A Path to Equality

Imagine a couple, holding hands, envisioning a life together—joint bank accounts, a place to call home, perhaps even a child. Now envision their dream being brought to an end not by preference but by law, merely because they are attracted to someone of the same sex. In India, it is the harsh reality for millions of same-sex couples, even after a decade of legal and social changes that have pried open the door to equality. The struggle for same-sex marriage is not solely about legal agreements; it's about dignity, belonging, and having the right to determine family on their own terms. With the 2018 decriminalization of homosexuality and increasing visibility of LGBTQ+ voices, India is at a turning point. Will it adopt marriage equality, or hold on to traditions of exclusion? This article sets out the many-sided battle for same-sex marriage in India by interweaving observations from three important documents: a scholarly analysis, a juridical explanation of recent courtroom hearings, and a critique of the Supreme Court's 2023 ruling. From colonial legacies to modern activism, from religious resistance to global influences, we'll dive into the historical, legal, cultural, and societal forces shaping this battle. Through stories of real people, like the policewomen who defied norms to marry in the 1980s, and broader trends, we'll uncover why this fight matters and what it will take to win it. Whether you're new to the topic or deeply engaged, this journey will illuminate the stakes and the hope driving India toward a more inclusive future.

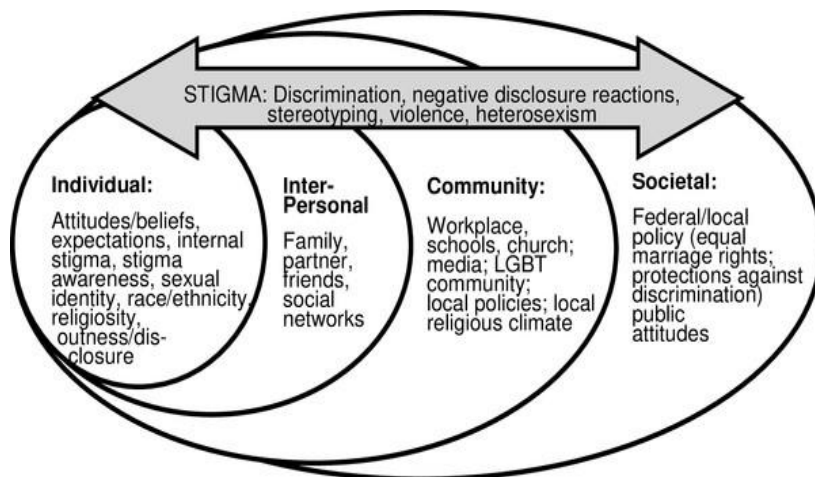
Historical and Cultural Roots:

- 1) India's history with same-sex love is a paradox of celebration and suppression. Older Hindu scriptures such as the Kama Sutra and myths such as that of Ardhanarishvara, a god with both male and female energies, show a society that once tolerated multiple gender identities and sexualities. Pre-colonial Indian poetry and visual art portray homosexual relationships with such tenderness that it implies the tolerance, even acceptance, of society.
 - In other places, groups honored individuals such as Hijras, transgender men and women who played ceremonial functions, integrating them into society. However, this tolerance was ruptured by British colonialism. Section 377 of the Indian Penal Code was made in 1860, criminalizing "unnatural" sex acts, bringing Victorian morals that conflicted with India's pluralistic culture. This legislation did not only prohibit acts but also stigmatized whole identities, driving LGBTQ+ existence underground.
 - In the post-independence era, Section 377 was kept, which continued to impose a culture of silence and shame. Even after its partial abolition in 2018, its hangover is seen in the social mindset, where queer people continue to be shunned or abused. India's multicultural nature makes it complicated.
 - Pride marches are a reflection of increasing acceptance in cities, but heteronormative attitudes prevail in the countryside. While some indigenous groups have customs that respect non-binary genders, discrimination still exists there.
 - This historical tug-of-war—between a heritage of inclusivity and a colonial legacy of exclusion—sets the stage for today's debate over same-sex marriage. Legalizing it would not only revive a lost cultural nuance but also defy centuries of imposed stigma. Pre-colonial Indian poetry and art represent same-sex relationships with a tender intimacy that indicates social tolerance, if not full acceptance.
- 2) In certain areas, people worshipped like Hijras, transgender persons who played ceremonial functions, integrating them into society. Instead, however, this tolerance was disrupted by British colonial occupation. [12-05-2025 06:50] Section 377 of the Indian Penal Code, enacted in 1860, made "unnatural" sex acts illegal, borrowing Victorian morals that conflicted with India's pluralistic traditions. This law did not merely prohibit acts; it stigmatized whole identities, relegating LGBTQ+ existence to the fringes. Post-independence, India retained Section 377, perpetuating a culture of shame and silence. Even after its partial repeal in 2018, its legacy lingers in societal attitudes, where queer individuals often face ostracism or violence. India's cultural diversity adds complexity. In urban centers, pride parades signal growing acceptance, while rural areas cling to heteronormative norms. Some indigenous communities maintain traditions that honor non-binary identities, yet discrimination persists even there. This historical tug-of-war—between a heritage of inclusivity and a colonial legacy of exclusion—sets the stage for today's debate over same-sex marriage. Legalizing it would not only restore a lost cultural nuance but also challenge centuries of imposed stigma. Others, such as Kerala and

Rajasthan, have implemented same-sex couple registration schemes, but these provide minimal protection. They short of giving them full marriage rights, which exposes couples to legal uncertainties around matters such as property or healthcare access.

The Legal Landscape: Milestones and Missed Opportunities

The legal struggle for LGBTQ+ rights in India is a saga of breakthroughs and setbacks. The 2018 Navtej Singh Johar v. Union of India case was a seismic win, with the Supreme Court invalidating sections of Section 377 to de-criminalize consensual same-sex relationships. The court ruled sexual orientation a fundamental part of identity, protected under Article 21's guarantees of privacy, dignity, and autonomy.



- Earlier, the 2014 NALSA v. Union of India judgment acknowledged the rights of transgender people, establishing a third gender and creating a precedent for inclusivity. These rulings demonstrated the judiciary's ability to lead change in a conservative environment. Alas, same-sex marriage is still a bridge too far. In 2023, a five-judge Supreme Court bench considered petitions to extend the Special Marriage Act (SMA) of 1954—a secular law for interfaith and inter caste marriages—to same-sex couples. The court's denial of legal recognition, leaving it to Parliament, was a setback for activists.
- The majority view contended that the gendered language of the SMA (e.g., "husband" and "wife") and its legislative intent preclude same-sex unions. Rewriting the law, they said, was Parliament's job. The minority opinion, however, advocated for recognizing queer unions as civil partnerships, ensuring access to rights like inheritance, adoption, and spousal benefits. India's marriage laws are a patchwork. Religious personal laws (Hindu, Muslim, Christian) define marriage as heterosexual, while the SMA, though secular, uses gendered terms. Amending these requires navigating India's federal system, where both central and state governments legislate on marriage.
- Certain states, such as Kerala and Rajasthan, have come up with registration schemes for gay couples, but these provide partial safeguards. But these are less than the marriage rights, making the couples vulnerable to legal uncertainty in matters of property or health access. The 2023 judgment of the court was not altogether dismissive. It recognized functional problems—such as joint bank accounts, pensions, and natal family protection from violence—urging action from the government. It also established transgender people's right to marry under current law, drawing on judgments such as Arun Kumar v. Inspector General of Registration (2019), which upheld a marriage between a cisgender man and a transwoman. Nevertheless, political resistance, with Rajasthan and Andhra Pradesh among the states that have opposed legalization, and the lack of a uniform civil code, make marriage equality a mirage. The progressive streak of the judiciary provides reassurance, but it demands action from the legislatures for effective change.

Societal Attitudes:

1) **Indian society is a patchwork of advancement and refusal** : Cities beat with pride parades and gay film festivals, a sign of increasing tolerance within younger generations and cosmopolitan classes. Social media gives voice to these voices, with hashtags #LoveIsLove trending alongside stories of queer determination. However, in rural heartlands and conservative strongholds, same-sex relationships are frequently greeted with suspicion or outright hostility. Marriage, as a sacred union between a man and a woman, is a cultural lightning rod. Religious institutions hold tremendous sway. Many Hindu, Muslim, and Christian leaders invoke scriptures to contend that marriage is God-ordained as heterosexual. But there are counter-narratives. There are some Hindu academics who refer to texts that rejoice in fluid gender categories and indicate the possibility of change through tradition. Sikh and Jain groups also contain forwardthinking voices supporting inclusivity.

2) **Religious opposition** tends to drown these out, however, and present same-sex marriage as a challenge to cultural values. The human cost of this split is severe. Take Leela and Urmila, two policewomen who, in 1987, were suspended and imprisoned for getting married to each other. Their narrative, adapted from one of the documents, highlights that the struggle for marriage equality is not an elite issue but one of survival for common couples.

3) **Awareness campaigns**, spearheaded by organizations such as the Naz Foundation, seek to change attitudes, employing storytelling and media to make queer lives seem more human. But still, there is stigma, and queer people are subjected to violence by families or communities, underlining the necessity for change in society to come before law reform. Advocacy and Activism: The Soul of the Movement At the center of India's marriage equality struggle are activists who combine courage with strategy. Groups such as the Naz Foundation, which spearheaded the fight against Section 377, and grassroots organizations such as Humsafar Trust have redefined the discourse through litigation, protest, and education. Delhi, Mumbai, and other city pride marches are not just parties; they're defiance, mobilizing partners from students to business executives. They organize demonstrations which get covered in social media, heightening demands for equality while building resilience among people. Legal cases are the backbone of activism. Petitions such as *Amburi Roy v. Union of India* contend that withholding marriage rights is against constitutional promises of equality (Article 14) and nondiscrimination (Article 15). Activists also advocate for pragmatic reforms, such as revising the SMA to employ gender-neutral language such as "spouse." Outside courts, they lobby lawmakers, requesting bills that legalize same-sex unions. Intersectional organizing is crucial, coupling demands for queer rights with those for caste, gender, and economic justice because marginalization accumulates across identities. International pressure supports this effort. Foreign governments and international human rights organizations, such as Amnesty International, press India to meet its obligations under such treaties as the International Covenant on Civil and Political Rights.

4) **Media advocacy is key**, with movies such as *Badhaai Do* and web series such as *Made in Heaven* depicting queer love with sensitivity, subverting stereotypes. Training programs for judges, doctors, and teachers work towards creating inclusive systems, while community outreach in rural India creates dialogue. In spite of pushback—conservative pushback, finance shortages, and logistical challenges—activists' persistence keeps the movement vibrant.

5) **Global Perspectives:** Learning from the World, India's struggle for marriage equality is part of a worldwide braided tapestry. More than 30 nations, ranging from Argentina to Germany, have legalized same-sex marriage, providing models for change. The Netherlands, the pioneering nation to legalize in 2001, did so by laws, whereas the U.S. did it through a 2015 Supreme Court verdict. South Africa's legalization in 2006, compelled by post-apartheid human rights obligations, demonstrates the catalytic potential of constitutional principles. Shared in all these countries is popular mobilization—activists who brought change through street protest, lobbying, and testimony. As closer similarities are to be found in Asia. Taiwan legalized in 2019 in what was a watershed moment across the region after sustained campaigning and national debates that defied traditionalist societies' complacency. Thailand's recent move toward legalization, outlined in one of the documents, demonstrates the strength of public opinion, even in the face of traditionalist opposition. On the other hand, nations such as Russia and Uganda, where same-sex relationships are banned or persecuted, sound a cautionary note about the dangers of deep-seated opposition. India, with its federal polity and religious diversity, can't simply copy these models but can learn from their approach. International human rights norms add weight to the reform argument.

6) **The Universal Declaration of Human Rights** guarantees the right to family regardless of gender. As a signatory to such agreements, India is under pressure to bring its laws in conformity. However, critics counter that India's cultural distinctiveness mandates a slower approach, invoking "Indian values" versus "Western" practices. Balancing these perspectives requires framing marriage equality as a universal right, rooted in India's own pluralistic heritage, while leveraging global precedents to bolster advocacy.

Challenges to Legalization:

A Steep Climb Legalizing same-sex marriage in India faces a gauntlet of obstacles. Societal stigma, fueled by conservative norms, marginalizes queer individuals, making broad public support elusive. Religious opposition, particularly from leaders who view marriage as a sacred heterosexual union, casts a long shadow. Politically, the absence of consensus holds things back. The 2023 Supreme Court judgment, though sympathetic, punted to Parliament, showing hesitation to cross judicial lines. Rajasthan, Andhra Pradesh, and Assam, as indicated in the documents, strongly are against legalization on grounds of cultural feelings. Legally, India's marriage structure is disjointed. Personal laws based on religion—Hindu Marriage Act, Muslim Personal Law, Indian Christian Marriage Act—construe marriage narrowly. The SMA, although secular, employs gendered terminology that cannot be applied to same-sex couples. Changing such laws involves wading through India's federal set-up, wherein marriage is a concurrent subject. A state like Tamil Nadu that modified its Hindu Marriage Act to cover self-respect marriages may lead the charge on same-sex recognition, but there may be central-state turf wars. Practical issues are formidable. Approving same-sex marriage entails the grant of rights such as adoption, inheritance, and spousal benefits, requiring sweeping legislation. Adoption is especially controversial, the Central Adoption Resource Authority (CARA) limiting queer couples, a position reaffirmed by the Supreme Court in 2023. Critics fear that societal stigma would be harmful to adopted children, but data from nations with marriage equality indicate otherwise. Enforcement is another stumbling block—legal approval without societal approval risks unequal enforcement, exposing couples to bureaucratic or social discrimination. Constitutional arguments also conflict. Proponents cite Articles 14 (equality), 15 (non-discrimination), and 21 (privacy and dignity) to demand marriage rights. Opponents counter that traditional notions of family, embedded in cultural norms, take precedence. The court's suggestion of alternative labels like "civil unions" or "partnerships" aims to bridge this gap, but without legislative backing, it remains theoretical. These challenges underscore that legalization requires not just legal reform but a cultural shift.

Prospects for the Future: Building a Path Forward Despite the hurdles, glimmers of hope emerge.

The 2018 decriminalization of homosexuality ignited a wave of activism, and younger generations are increasingly vocal about equality. The Supreme Court's 2023 appeal to the government committee, led by the Cabinet Secretary, to deal with queer couples' rights—such as joint accounts, pensions, and protection against violence—is a concrete step. Progressive states such as Kerala could set an example, providing templates for others to follow. Advocacy has to evolve to capture these openings. Legal efforts should focus on individual rights, such as protection against cohabitation, in order to move towards

marriage equality. Public campaigns, using social media, movies, and narratives, can change attitudes, particularly in rural India. Involving religious leaders, as some activists suggest, might redefine marriage as a human right, rather than a gendered institution. Politically, the 2024 Lok Sabha elections provided an opportunity to bring queer rights mainstream, although continuous pressure is required to keep the issue alive. Internationally, India is increasingly under pressure to bring its laws into line with human rights norms. Being a signatory to agreements such as the International Covenant on Civil and Political Rights, it's under pressure to ensure nondiscrimination. Blending international norms with domestic advocacy might turn the balance. Grassroots work, such as people building and educating, supports legal avenues, bringing acceptance bottom-up. Picture a future where a bride and groom such as Leela and Urmila are able to wed openly, their marriage hailed as a victory of love over tradition. That future, as far away as it seems, is within our grasp with shared determination. Allies have a key role. Straight people, celebrities and neighbors alike, can make queer voices louder, pushing against prejudices in their own groups. Corporate backing, such as affirming workplace practices, changes norms as well. Education systems, by incorporating queer viewpoints into textbooks, can influence generations to come. These attempts, accompanied by relentless lobbying, might break down the obstacles to legalization, opening the doors to a more inclusive India.

Conclusion

The struggle for same-sex marriage in India is a miniature representation of a larger struggle for equality in a country balancing tradition and modernity. From the colonial shackles of Section 377 to the judicial victories of 2018, the journey has been transformative yet unfinished. The lack of marriage equality puts couples such as Leela and Urmila in legal limbo, deprived of the "bouquet of rights"—dignity, security, and belonging—that marriage provides. This article has followed the historical, legal, societal, and international threads of this battle, exposing a country at a turning point. Activists, with their mix of fearlessness and tactics, are re-writing India's narrative, one petition, one pride march, one conversation at a time. The international perspective highlights what's possible—countries in which love conquers gender—yet India's distinct context requires patience and determination. The query isn't so much whether India will legalize gay marriage, but whether it will accept a world where love is a right, not a luxury. Change begins with us. Hear queer voices, push against bias, and require policies that live up to India's pluralist spirit. Equality is a journey that's far from over. Will you take one? As India reaches this juncture, the solution is our shared will to create a society where every love story can take hold. The struggle over gay marriage in India is a mini-microcosm of a larger pursuit of equality within a country sitting between tradition and contemporary times. From the colonial constraints of Section 377 to the court victories of 2018, the journey has been a revolutionary one but an incomplete one. The lack of marriage equality puts couples such as Leela and Urmila in a state of legal limbo, deprived of the "bouquet of rights"—dignity, security, and belonging—that marriage provides. This article has followed the historical, legal, social, and international threads of this fight, and what it has seen is a country at a crossroads. Activists, with their mix of bravery and strategy, are rewriting India's narrative, one petition, one pride march, one conversation at a time. The global lens shows what's possible—nations where love transcends gender—while India's unique context demands patience and persistence. The question isn't just whether India will legalize same-sex marriage, but whether it will embrace a future where love is a right, not a privilege. Change starts with us. Listen to queer voices, challenge biases, and demand policies that reflect India's pluralistic soul. The road to equality is long, but every step counts. Will you accept one undefined? At this juncture of India's journey, the solution is in our common will to create a society where each love story will be given an opportunity to flourish.